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January 26, 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

VIA HAND DELIVERY

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JAN 26 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Paul Flanagan
Executive Director
New Jersey Board of Public Utilities
44 South Clinton Avenue, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

*Sub
2/1/18*

Re: In the Matter of the Petition of MWC Water Company for Approval of an Increase in its Rates for Water Service and Other Tariff Changes and for an Order Authorizing Special Accounting Treatment of Income Tax Refund Proceeds and Future Income Tax Deductions
BPU Docket No. WR1710-1049
OAL Docket No. PUC 16144-2017S

Dear Mr. Flanagan

Please accept this letter on behalf of New Jersey-American Water Company, Inc. ("NJAWC") in the above-referenced matter opposing the request of Petitioner, Middlesex Water Company ("MWC") that the New Jersey Board of Public Utilities (the "Board") grant interlocutory review and reversal of the January 12, 2018 Order on Intervention (the "Order") of Administrative Law Judge Tricia M. Caliguire under *N.J.A.C. 1:1-14.10*. (See Exhibit A, Order).

I. Preliminary Statement

MWC has filed a somewhat hysterical interlocutory appeal from a well-reasoned Order granting a garden-variety intervention motion. Not only does MWC seek the extraordinary relief of interlocutory appeal but MWC also asks the Board to drop everything and act on an emergent basis. In essence, MWC argues, in the absence of the Board reversing Judge Caliguire, utility regulation in New Jersey will be thrown into a turmoil as will MWC's current rate case. This is simply not true, and MWC offers no support for its position (legal or factual).

NJAWC's intervention here will have no different effects on New Jersey regulation or MWC's current rate case than will MWC's or Aqua New Jersey, Inc.'s intervention in NJAWC's current rate case. The *only* difference is that NJAWC buys MWC water from Marlboro Township at MWC rates. This distinction will hardly have a cataclysmic impact on New Jersey regulation or MWC's current rate case.

Despite its current attempt to wriggle out of its prior contention, as a practical matter MWC asks this Board to rule as a matter of law that an intervenor *must* be a customer. Such a novel legal determination would deprive a public utility, putative intervenor with a legitimate interest in

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protecting its customers, from pursuing that legitimate interest. The Board should decline to adopt this novel legal approach.

NJAWC does not intend to disrupt this proceeding. It does intend to examine the impact of MWC's proposals on NJAWC's customers and perform its responsibility under *N.J.A.C. 1:9-7.6*, as it should do. (See Exhibit B, Certification of Suzana DUBY).

Because there is no valid reason to reverse, the Board should affirm Judge Caliguire's Order.

II. Introduction/Background

On December 13, 2017, NJAWC filed a motion to intervene (the "Motion") in the MWC rate proceeding under *N.J.A.C. 1:1-16.1, et seq.* solely to advance the interests of NJAWC's customers. Any increase in MWC's rates to NJAWC will be passed on to NJAWC's customers dollar-for-dollar under the Board's Purchased Water Adjustment Clause ("PWAC") rules. The MWC rate increase will not impact NJAWC's shareholder. However, NJAWC seeks, by the Motion to perform its regulatory responsibility, as codified in Board rules to safeguard customer interests. *N.J.A.C. 14:9-7.6(b) 8*.

NJAWC does not possess an interconnect with MWC in the Marlboro Township area from which it can purchase water. As a result, NJAWC entered into an agreement with the Marlboro Township Municipal Utilities Authority ("Marlboro") to purchase MWC water from Marlboro.¹ Under the Agreement for the Supply of Water between Marlboro and NJAWC (the "Agreement"), NJAWC purchases MWC water from Marlboro. In turn, NJAWC pays Marlboro a two-part rate. (See Exhibit B, Certification of Suzana DUBY). Part one, involved in this matter, is a direct pass through for water service that Marlboro pays to MWC. By contract with a political subdivision of New Jersey, any increase in MWC's rates is passed on to NJAWC dollar-for-dollar. Part two, irrelevant to this appeal, is NJAWC's payment to Marlboro for the costs to wheel MWC water to NJAWC.

NJAWC resells the water that NJAWC purchases from MWC to its customers. Under the Board's PWAC regulations, *N.J.A.C. 14:9-7.1, et seq.*, any increases in rates from MWC are passed directly on to NJAWC's customers, also dollar-for-dollar.

Against this backdrop, NJAWC exercised its right to intervene in MWC's rate case solely to vouchsafe customer interests. Over MWC's objection, Judge Caliguire granted the Motion in a well-reasoned Order. Now, MWC asks the Board to reverse the Order. The Board should deny MWC's request and affirm the Order because NJAWC has a direct, substantial interest in this case.

III. NJAWC Meets the Standard for Intervention

Judge Caliguire appropriately found that NJAWC meets the standard for intervention. Absent a showing of an abuse of discretion by Judge Caliguire, which MWC fails to even attempt, the Board should affirm the Order. See *Metallix Ref., Inc. v. Fry's Metals, Inc.*, No. A-4296-12T3, 2014 WL 4064793, at *5 (N.J. Super. Ct. App. Div. Aug. 19, 2014) (the grant of a motion for intervention is committed to the sound discretion of the trial court and will not be disturbed on

¹ The Marlboro Township MUA has since been dissolved, and Marlboro Township has succeeded to its rights and responsibilities. The contracting party will be referred to herein as Marlboro.

appeal, absent a clear showing that the court has misapplied its discretion). “An abuse of discretion occurs when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.” *Id.* (internal quotations and citation omitted).

N.J.A.C. 1:1-16.1 specifies who may intervene. Specifically, an intervenor may be “any person or entity” who will be substantially, specifically and directly affected by the outcome of a contested case. That is, an intervenor must have a sufficient stake in the proceeding.

A. MWC Impermissibly Reads a “Something More” Requirement into the Standard for Intervention

In MWC’s opposition to the Motion, MWC repeated a nearly uncountable number of times that Judge Caliguire should deny NJAWC intervention because NJAWC was not a direct customer of MWC. But as NJAWC pointed out in response to the opposition, neither the intervention rule, nor any case law cited by MWC or found by NJAWC, requires that an intervenor be a direct customer. Now, MWC alters its position and states that one need not be a customer to intervene, but an intervenor must offer “something more.” MWC does not say what more NJAWC must offer, only that “[t]here is simply no ‘more’ here.”²

Despite MWC’s legally baseless standard, Judge Caliguire’s Order correctly outlines the standard to be followed in ruling on a motion to intervene. Under *N.J.A.C.* 1:1-16.3(a), the decision maker considers the following factors:

1. The nature and extent of the movant’s interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from the movant’s inclusion; and
4. Other appropriate matters.

Judge Caliguire considered NJAWC’s motion for intervention and appropriately determined that NJAWC met the foregoing standard.

B. NJAWC Has a Direct and Specific Interest in MWC’s Rate Case Because NJAWC Will Be Affected by any Increase in MWC’s Rates

NJAWC has an agreement to purchase water from Marlboro, which NJAWC, in turn, resells to its customers. Marlboro does not exercise any discretion under the Agreement. NJAWC pays Marlboro a two part rate. The Agreement provides that the pass-through rate is “increased each and every time the New Jersey Board of Public Utilities (the ‘BPU’) approves an increase” in the rates that Marlboro pays to MWC. Thus, Marlboro passes on to NJAWC any increase in MWC’s rate dollar-for-dollar. (See Exhibit B, Certification of Suzana DUBY). The wheeling rate is not at issue in this case. What is simply at issue is that any increase in MWC’s rate will be passed on, dollar-for-dollar, to NJAWC. MWC claims that an increase in the pass-through rate “might” or

² MWC was forced to abandon its position because it was legally unsupportable. By way of example, N.J.S.A. 48:2-32.2 allows municipalities, whether utility customers or not, to intervene to assert the interests of municipal residents. NJAWC while not a customer of MWC, seeks to do the same for its customers.

"might not" happen. MWC also argues that NJAWC "may" be affected by the results of this proceeding. These assertions are incorrect. Under the Agreement, NJAWC *will* be affected by the results of this proceeding, and Judge Caliguire agreed. This simple fact cannot be disputed, and any attempt to do so is disingenuous.

While acknowledging that NJAWC is not MWC's direct customer, Judge Caliguire reasonably relied upon the terms of the Agreement in finding NJAWC's intervention proper:

NJAWC has, by the terms of its agreement with Marlboro, no ability to negotiate rates; it must simply pay whatever new rate the Board approves. . . . the current proceeding is the only one in which NJAWC can participate to protect its customers from the increase in rates for water sold by MWC.

In the Opposition and again in its appeal papers, MWC contends, "no amount of NJAWC's repeating that something 'will' happen when it merely 'might' or 'might not' happen can actually transform uncertainties into certainties." Given the Agreement, however, Judge Caliguire reasonably gave little weight to MWC's assertion that the passing on of any rate increase granted to MWC only "might" happen. Judge Caliguire properly accepted as true certain plain facts, which cannot be ignored.

Without any support, MWC suggests that a contract can never give rise to an interest in a public utility's rate case. This argument is irrelevant to the applicable standard for a motion to intervene, and is also not true. MWC's argument that Marlboro can change the rate it charges NJAWC through the appropriate municipal procedures is also irrelevant. The Board must determine whether Judge Caliguire provided a rational explanation for her decision, whether she departed from established Board policies, or rested her decision on an impermissible basis. None of the foregoing is present here where Judge Caliguire's Order rested on the reasoned application of the intervention standard to the facts that the parties presented. MWC's tortured version of the facts and mere disagreement with the Order is not enough to support the Board's reversal of Judge Caliguire's decision.

Judge Caliguire appropriately granted NJAWC the right to intervene to protect the interests of its customers, not to help NJAWC avoid the Agreement with Marlboro. As MWC admitted in its opposition, "MWC has intervened in NJAWC's base rate case as a direct customer of NJAWC precisely to ensure that its own customers – one of which is the Township of Marlboro – are treated fairly from the results of the NJAWC base rate case." Likewise, NJAWC has a substantial and direct interest here – protecting the interests of its customers – meriting intervention.

C. The Interest that NJAWC Seeks to Protect Is Not Miniscule

As MWC did before Judge Caliguire, MWC attempts to minimize the impact of a rate increase on NJAWC's customers. To do so, MWC converts the substantial dollar impact which could emanate from this case to a per customer impact on each individual NJAWC customer. Of course, this argument is specious.

While admittedly NJAWC is the largest water utility in New Jersey serving customers throughout the State, the impact of an increase in MWC's rates on NJAWC's customers is significant.

MWC's argument might carry some weight if MWC were NJAWC's only supplier. However, NJAWC contracts with many suppliers, and incurs many costs.

NJAWC jealously regards cost increases from any vendors, whether they be negotiated increases with vendors of water, of chemicals, of other supplies, or other similar increases. It would be inappropriate for NJAWC to simply state to a vendor: "We don't care about your increase, because the increase on specific, individual customers is not all that great." Cumulatively, each increase has a substantial impact upon NJAWC's customers. In this regard, NJAWC is proud of its efforts to control costs, and benefit customers. Indeed, this Board would find it inappropriate if NJAWC simply sat on its hands and failed to do so. In NJAWC's last rate, witness, Frank Simpson testified that NJAWC had reduced its operating and maintenance expenses by approximately \$19 million as compared to what the Board approved in NJAWC's rate increase in 2012. In NJAWC's current case, as stated in NJAWC's Petition verified by Mr. Simpson, those expenses have remained relatively flat with only minor increases. (See Exhibit B, Certification of Suzana Duby.)

Despite the foregoing facts and circumstances, MWC argues that NJAWC's request to intervene in MWC's rate case to control costs should be denied, yet blindly criticizes NJAWC's cost containment efforts. MWC's arguments should be rejected because it is without factual support and because it would force the Board to disregard its own rules. Because increases in supplier charges are passed on to NJAWC's customers, in each PWAC petition, NJAWC is required under the Board's rules at *N.J.A.C. 1:9-7.6* to outline its "efforts to investigate the basis for any cost increase proposed by its purveyor" and provide the results of that investigation. The clear purpose of these rules is to protect the interests of NJAWC's customers. The Board should reject MWC's attempt to rewrite those rules.

D. NJAWC's Interest in this Proceeding is Different from the Other Parties

MWC argues that it is unclear why NJAWC's interest is different from other parties in this proceeding, e.g. the Division of Rate Counsel. First, MWC ignores *N.J.A.C. 1:1-16.3(b)* which provides that in a case where one of the parties is a State agency authorized by law to represent the public interest, no movant shall be denied intervention solely because the movant's interest may be represented in part by said State agency.

Second, there is no other intervenor in this case receiving service in the same manner, under the same rate schedules that will impact NJAWC in this case. Interestingly, Marlboro intervened in this case after NJAWC did. While Marlboro is surely interested in controlling costs to its residents, Marlboro is not a public utility regulated by this Board. It does not possess *N.J.A.C. 1:9-7.6* responsibility. Attached as Exhibit C is MWC's letter to Judge Caliguire in support of Marlboro's late filed intervention. Apparently MWC was not concerned that Marlboro would upset its rate case procedures at this juncture.

E. NJAWC's Intervention in this Case Will Cause No Confusion nor Undue Delay

MWC's argument that NJAWC's intervention will cause confusion and delay in this case is completely contrary to the facts. NJAWC has agreed to abide by the procedural schedule set forth in the Prehearing Order entered on December 26, 2017. (See Exhibit D, Prehearing Order). Indeed, the Prehearing Order sets forth a discovery schedule and date for completion, evidentiary hearing dates and order of proofs, none of which will change because of the Order.

Further, the Prehearing Order mandates no limit on the number of fact and expert witnesses. Regarding expert witnesses, the offering party must provide the other parties with a resume, a written summary of testimony, and reasonable access to all reports, data, investigations, etc. upon which the expert relies. NJAWC has taken no issue with the Prehearing Order, nor could it. The Order itself holds that NJAWC's intervention shall not serve as a reason to delay the proceedings and precludes NJAWC from submitting duplicative testimony without leave of Judge Caliguire at the plenary hearing.

Likewise, the Order does not change in any way the nature of the case and the issues to be resolved. The Board is charged with supervising and regulating MWC, a public utility company pursuant to N.J.S.A. 48:2-13(a), and setting "just and reasonable" rates for the utility pursuant to N.J.S.A. 48:2-21(b)(1). As outlined in Judge Caliguire's Prehearing Order, MWC requests approval of an increase in its rates for water service, changes to its Tariff, including the base consumption and base costs within the meaning of the applicable purchased water adjustment clause, and the recovery of the costs of improvements to its distribution system through reinstatement of a Distribution System Improvement Charge ("DSIC"). The Prehearing Order also provides that the issues to be resolved are whether MWC can "prove by a preponderance of the evidence" that the relief it seeks is necessary for MWC to provide safe, adequate and proper service to its customers. MWC bears the burden of proof in establishing "(1) the value of its property or the rate base, (2) the amount of its expenses, including operations, income taxes, and depreciation, and (3) a fair rate of return to investors." *In re N.J. Am. Water Co.*, 169 N.J. 181, 188 (2001). NJAWC's Motion and Judge Caliguire's granting of the same do not change these issues.

MWC asks whether, as a result of the Order, its rate case will turn into an examination of what Marlboro might or might not charge NJAWC under the Agreement and whether it will need to examine all of NJAWC's contracts with any customer to determine the impact of any rate increase on NJAWC's customers. The answer to both questions is simple: "No." Such examination would not bear upon the issues in MWC's rate case. There is only one thing that MWC must do in this case: meet its burden of proving that the proposed rates are just and reasonable. To prove its case, MWC need not inquire further into NJAWC's Agreement with Marlboro. The relevant terms of the Agreement have been provided; they are plain and speak for themselves. NJAWC will not complicate MWC's attempt to prove its case any more than any other intervenor would do. NJAWC does not intend to disrupt this case. It intends to examine MWC's presentation to determine the impact on NJAWC customers. (See Exhibit B, Certification of Suzana DUBY).

MWC argues that the Board should reverse the Order because it will inevitably result in a cascade of interventions in rate cases. This contention is based on pure speculation. It posits the following absurd example:

Should an individual residential customer of Middlesex's Bayview system in Downe Township on Delaware Bay now be permitted to intervene in NJAWC's current base rate case on the theory that any rate increase granted to NJAWC *would* eventually appear on that Bayview customer's Middlesex bill since the BPU has the authority to allocate any increase to any set of customers it deems appropriate.

If such an unforeseeable state of affairs should arise, the OAL and the BPU can address it easily and promptly.

The only adverse impact on MWC's rate case that MWC seriously advances is MWC's concern that NJAWC's intervention status will allow NJAWC to access the confidential financial and other records that MWC produced and will produce in discovery. MWC attempts to make much of the fact that it has already negotiated and executed non-disclosure agreements in this case. Importantly, to remove any suggestion that NJAWC's sole basis for intervening in this case is to rummage through MWC's financial records, NJAWC will rely on MWC's designation of a document as "trade secret and confidential", will not challenge the same, and will not seek any such document. It simply has no interest in them. **Thus, MWC's concern, albeit unfounded, is eliminated.** (See Exhibit B, Certification of Suzana DUBY).

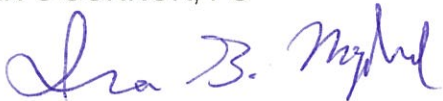
There is nothing exceptional about the Order. Rather, MWC asks the Board to reverse, on an emergent, interlocutory basis, a simple intervention Order on a garden-variety motion to intervene that will have no impact on MWC's rate case. There is no reason to suspect that NJAWC's intervention will disrupt MWC's rate case any more than there is reason to suspect that MWC's intervention in NJAWC's pending rate case will be disruptive. The "disruption" argument is meritless.

IV. Conclusion

The Board should not disturb Judge Caliguire's well-reasoned Order on this very ordinary motion to intervene in favor of MWC's novel principles of law. The Board should affirm the Order as NJAWC will be substantially, specifically and directly affected by the outcome of this case.

Respectfully,

COZEN O'CONNOR, PC



By: Ira G. Megdal

IGM/kn

Enclosures

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IN THE MATTER OF MIDDLESEX WATER COMPANY FOR APPROVAL OF AN
INCREASE IN ITS RATES FOR WATER SERVICE AND OTHER TARIFF CHANGES,
AND FOR AN ORDER AUTHORIZING SPECIAL ACCOUNTING TREATMENT OF
INCOME TAX REFUND PROCEEDS AND FUTURE INCOME TAX DEDUCTIONS

BPU Docket No. WR17101049
OAL Docket No. PUC 16144-2017 S

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON INTERVENTION

OAL DKT. NO. PUC 16144-17

AGENCY DKT. NO. WR17101049

**IN THE MATTER OF THE PETITION
FOR APPROVAL OF AN INCREASE
IN ITS RATES FOR WATER SERVICE
AND OTHER TARIFF CHANGES
FOR MIDDLESEX WATER COMPANY.**

Stephen B. Genzer, Esq., for petitioner, Middlesex Water Company (Saul Ewing Arnstein & Lehr, attorneys)

Jay Kooper, Vice President, General Counsel and Secretary (Middlesex Water Company/Pinelands Water Company)

Veronica Beke and Renee Greenberg, Deputy Attorneys General, for Staff of the Board of Public Utilities (Christopher S. Porrino, Attorney General of New Jersey, attorneys)

Debra Robinson and Susan McClure, Assistant Deputies Rate Counsel, for Division of Rate Counsel (Stefanie A. Brand, Director)

Michael S. Nagurka, Esq., for intervenor, Township of East Brunswick (Gilmore & Monahan, attorneys)

Ira G. Megdal, Esq., for intervenor, New Jersey-American Water Company, Inc. (Cozen O'Connor, attorneys)

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On October 10, 2017, Middlesex Water Company (Middlesex) filed a petition for an increase in its rates for water service and other relief with the Board of Public Utilities. The matter was transmitted to the Office of Administrative Law (OAL) on October 30, 2017, and assigned to the undersigned. An initial case management conference was held on December 11, 2017.

On December 13, 2017, New Jersey-American Water Company, Inc. (NJAWC) filed a motion seeking leave to intervene as a party in the above-captioned utility rate case pursuant to N.J.A.C. 1:1-16.1 et seq. On December 26, 2017, Middlesex filed a letter stating its opposition to the motion of NJAWC and on January 2, 2018, NJAWC filed a reply letter to petitioner's letter in opposition to NJAWC's motion.

POSITIONS OF THE PARTIES

Middlesex and NJAWC are the only parties to take a position with respect to NJAWC's motion. An earlier motion to intervene filed by the Township of East Windsor, a customer of Middlesex, was granted without opposition.

NJAWC stated that its interest in this matter results from its Agreement for the Supply of Water (Agreement) with the Marlboro Municipal Utilities Authority (Marlboro) by which, among other things, NJAWC pays Marlboro for water purchased by Marlboro from Middlesex at the same rates as Marlboro is charged by Middlesex, meaning that any increase in Middlesex rates approved by the Board in this matter will be passed on to NJAWC and, eventually, on to NJAWC's customers.

Middlesex opposes the motion of NJAWC on the grounds that NJAWC's indirect relationship to Middlesex, as a "customer of a customer," is not sufficient to give NJAWC standing to intervene (or participate) in this matter. Middlesex stated that the interests of the customers of NJAWC are already represented by both the Division of Rate Counsel and the

Staff of the Board, eliminating the need for multiple representation. In 2017, NJWAC also initiated a base rate case in which Middlesex was granted intervenor status without opposition. Middlesex distinguished its interest, and intervenor status, in the NJAWC rate case from that of NJAWC in this case. Middlesex is a direct customer of NJAWC and intervened in the NJAWC rate case to “insure that its own customers . . . are treated fairly” in that case. Middlesex notes that standing to those so directly affected is “regularly granted.”

Middlesex stated that the actual financial impact of any potential rate increase on the customers which NJAWC represents is not substantial and, therefore, cannot support standing to intervene by NJAWC. Further, NJAWC’s interest in this matter is not sufficiently different from that of any other party’s so as to add measurably and constructively to the scope of this case, and including NJAWC would result in confusion and undue delay.

NJAWC responded that there is no basis for an indirect customer of Middlesex to be denied intervenor status. NJAWC seeks to intervene in this proceeding for the same reason that Middlesex intervened in the NJAWC rate case, that being to protect the interests of its customers. To avoid any confusion or undue delay, NJAWC agreed to abide by the procedural schedule already adopted by the undersigned and to abide by the terms of the non-disclosure agreements (NDAs) already executed by Middlesex and the other parties.

Neither party cited to any caselaw. Middlesex noted that NJAWC is attempting to change the standard for intervention into “an efficient and unworkable ‘customer of a customer’ one not previously adopted by the [Board] or any [ALJ].” NJAWC counters that Middlesex offers no support for the direct customer standard, other than to assert that the standard exists.

LEGAL ANALYSIS

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a), requires that the decision-maker consider the following factors:

- (1) the nature and extent of the moving party's interest in the outcome of the case;

- (2) whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
- (3) the prospect for confusion and delay arising from inclusion of the party; and
- (4) other appropriate matters.

If the standard for intervention is not met, N.J.A.C.1:1-16.5 and N.J.A.C. 1:1-16.6(c), provide for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact. In applying the standards for intervention to a matter subject to Board review, it is appropriate to look to the agency for guidance. See, Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980).

Just a year ago, the Board was asked to determine whether Middlesex could intervene—over NJAWC's objection—in an action brought by NJAWC for Board approval of the acquisition of a third water company. Order, In the Matter of the Joint Petition of American Water Works Company, et al., Docket No. WM16101036, 2017 N.J. PUC LEXIS 17 (Jan. 25, 2017).¹

Middlesex, as a direct customer of NJAWC through two water purchase contracts, stated that costs associated with the proposed acquisition would be recovered and, therefore, could affect the rates NJAWC would then charge Middlesex. Id. at 2. Middlesex also stated that its interests would not be advanced by any of the parties to the case, which included Rate Counsel. Id.

In its Order, the Board explained that the application of the above-cited regulatory standards involves an implicit balancing test:

The need and desire for development of a full and complete record, which involves consideration of a diversity of interests,

¹ As stated above, neither party cited to this decision.

must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case.

[Id. at 4-5 (citation omitted).]

In the above case, the Board declined to give Middlesex intervenor status (but did accord the company participant status) because the proceeding would not result in changes in rates or rate classification and "Middlesex's ratemaking concerns . . . will be addressed in NJAWC's next base rate case, and it [was] anticipated that Middlesex will request and receive intervenor status then." Id. at 5. In other words, the Board looked to whether the issue as to which movant was interested would be considered in the case.

Two environmental advocacy groups were denied intervenor status, but granted participant status, in an action brought by an electric distribution company for approval of an infrastructure resiliency upgrade program. Order, In the Matter of the Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, Docket Nos. EO13020155 and GO13020156, 2013 N.J. PUC LEXIS 279 (Sept. 18, 2013). On interlocutory appeal, the proposed intervenors described their interest as seeking to ensure that the proposed infrastructure upgrades included energy efficiency and other demand-side efforts. The Board, though, agreed with the company in finding that its review in this proceeding was limited to ensuring that the proposed resiliency program satisfied the requirements already delineated by the Board in an earlier Order and would not factor in the use of "distributed generation, energy efficiency and demand-side programs." Id. at 20-21. The interests identified by the proposed intervenors "lie beyond the scope of this proceeding," making the grant of participant status "the appropriate avenue." Id. at 21.

Here, NJAWC looks to intervene in the base rate case because, if the Board approves the rate increase sought by Middlesex, NJAWC will pay more for the water sold by Middlesex and NJAWC's customers will in turn pay more. Yes, as Middlesex insists, the relationship between Middlesex and NJAWC is indirect. Middlesex's direct customer, the Township of Marlboro, resells water purchased from Middlesex to NJAWC. Yet, NJAWC has, by the terms of its agreement with Marlboro, no ability to negotiate rates; it must simply pay

whatever new rate the Board approves.² As movant's counsel states (though with less emphasis), the current proceeding is the only one in which NJAWC can participate to protect its customers from the increase in rates for water sold by Middlesex.³

The intervention of NJAWC in this case will create no more confusion and/or delay than the intervention of Middlesex in NJAWC's case has created. NDAs are standard in rate cases and NJAWC has agreed to abide by those already executed. Since, as Middlesex states, it prefers NJAWC—another water company—to sign an NDA more appropriate for a competitor, the parties may wish to use an NDA comparable to the one Middlesex executed in the NJAWC rate case.

ORDER

IT IS ORDERED that the motion of the New Jersey-American Water Company, Inc. for leave to intervene is **GRANTED**.

IT IS FURTHER ORDERED that this Amended Order shall not serve or be used as a reason to delay the proceedings, nor shall duplicative testimony be permitted of NJAWC without leave of the undersigned at the plenary hearing.

This amended order may be reviewed by the **BOARD OF PUBLIC UTILITIES**, either upon interlocutory review, pursuant to N.J.A.C. 1:1-14.10, or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

January 12, 2018 _____

DATE

TMC/nd



TRICIA M. CALIGUIRE, ALJ

² Middlesex's argument that "[w]hat Marlboro charges its own customers for water service is not the business of this [proceeding]" is not persuasive. Notwithstanding Marlboro's potential arrangements with other customers, Marlboro will charge this particular customer whatever rate the Board approves in this proceeding.

³ To further support its claimed interest in this proceeding, NJAWC cites the regulation describing factors the Board must consider when evaluating petitions for approval of purchase water adjustment clauses, which includes review of the applicant's "efforts to investigate the basis for any cost increase proposed by its purveyor." N.J.A.C. 14:9-7.6(b)8.

CERTIFICATION

STATE OF NEW JERSEY)
 :
COUNTY OF ESSEX)

Suzana Duby, of full age, being duly sworn, upon her oath deposes and says:

1. I am the Corporate Counsel, Eastern Division, and I am authorized to make this Certification on behalf of New Jersey-American Water Company, Inc. (“NJAWC”) in this matter.

2. Under NJAWC’s contract with Marlboro (the “Agreement”), NJAWC pays Marlboro a two-part rate. One part is a direct pass through of Middlesex Water Company (“MWC”) charges and any increase in charges. The other is a wheeling rate. A true and current copy of the Agreement is attached as Exhibit 1.

3. Under the Agreement, Marlboro passes on to NJAWC any increase in MWC’s rate dollar-for-dollar.

4. In this proceeding, NJAWC intends to examine the impact of MWC’s proposals on NJAWC’s customers and perform its responsibility under *N.J.A.C. 1:9-7.6* to “investigate the basis for any cost increase proposed by its purveyor.”

5. In NJAWC’s last rate case, witness Frank Simpson testified that NJAWC had reduced its operating and maintenance expenses by approximately \$19 million as compared to what the Board approved in NJAWC’s rate increase in 2012. A copy of the relevant testimony is attached as Exhibit 2. In NJAWC’s current case, as stated in NJAWC’s Petition verified by Mr. Simpson, those expenses have remained relatively flat with only minor increases.

6. NJAWC will rely on Middlesex Water Company’s designation of a document as “trade secret and confidential”, will not challenge the same, and will not seek any such document.

7. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



By: Suzana Duly
Suzana Duly

Sworn and subscribed
before me this 25th day of
January, 2018

Donna J. Carney
Notary

DONNA CARNEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 24, 2018

AGREEMENT FOR THE SUPPLY OF WATER

BETWEEN

THE MARLBORO TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

AND

NEW JERSEY - AMERICAN WATER COMPANY, INC.

This **AGREEMENT** (hereinafter referred to as the "Agreement") is entered into as of the 5th day of February, 2008,

between

THE MARLBORO TOWNSHIP MUNICIPAL UTILITIES AUTHORITY,

a corporate public body organized and existing under and pursuant to the provisions of N.J.S.A. 40:14B-1, *et seq.*, maintaining its administration office at 14 Harbor Road, in the Township of Marlboro, County of Monmouth and State of New Jersey, and having a mailing address of Post Office Box 280, Wickatunk, New Jersey 07765 (hereinafter referred to as the "Authority" or "MTMUA");

and

NEW JERSEY - AMERICAN WATER COMPANY, INC.

a public utility and corporation, organized under the laws of the State of New Jersey, maintaining its principal place of business at and having a mailing address of 131 Woodcrest Road, Cherry Hill, New Jersey 08003 (hereinafter referred to as the "Company" or "NJAWC").

WITNESSETH:

WHEREAS, the Authority and the Company each own and operate separate public, community water supply and distribution systems, which said systems are adjacent, and/or in close proximity, to each other at several points at or near the territorial borders of Marlboro Township and Aberdeen Township and/or the Township of Holmdel; and

WHEREAS, the Company has requested the Authority to provide NJAWC with a supply of water for private and public uses in accordance with the terms of this Agreement; and

WHEREAS, the Authority is willing to supply potable water to the Company as provided for herein; and

WHEREAS, the Authority intends to increase its treatment and/or supply capabilities to provide water service to the Company as contemplated by the provisions of this Agreement;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises herein contained and for other good and valuable consideration, it is hereby agreed by and between the Authority and the Company as follows:

1. **Supply of Water.**

The Authority agrees to supply the Company with water, and the Company agrees to accept such water upon the terms and conditions set forth herein.

2. **Effective Date and Term of this Agreement.**

Regardless of the actual execution date(s) of this Agreement by the respective parties, the provisions of this Agreement shall be deemed effective and applicable to all sales/purchases of water from on and after February 5, 2008 (the "Effective Date"). The foregoing notwithstanding,

water service pursuant to this Agreement shall not commence until such date as is set forth in a written notice to be given by the Company to the Authority, which said notice shall state that the Company has completed the Interconnection Upgrades (as such term is hereinafter defined in Article 4 of this Agreement) and establish the aforementioned water service commencement date (the "Water Service Effective Date"). (It is anticipated that the Water Service Effective Date will be June 1, 2008). Except as otherwise provided herein, this Agreement shall terminate on May 31, 2018 (the "Termination Date"). However, if the Water Service Effective Date is later than June 1, 2008, the Termination Date shall be such date as is ten (10) years following the Water Service Effective Date.

The Company shall have the right and option of renewing this Agreement for an additional period of ten (10) years from the Termination Date. The Company must exercise said option by notifying the Authority, in writing, of its intention to do so at least three hundred sixty five (365) days prior to the Termination Date. The foregoing notwithstanding, if this Agreement has not been renewed beyond the Termination Date, the term of this Agreement shall, nonetheless, continue on a year-to-year basis; with either party being entitled to terminate the Agreement upon written notice served upon the other party at least three hundred sixty five (365) days prior to the designated Termination Date.

Notwithstanding anything contained herein to the contrary, the parties hereto, by mutual written agreement, may elect to adopt and approve other provisions relating to the term of this Agreement.

3. **Rates.**

The Company shall pay the Authority at a rate that is the sum of two (2) components hereinafter referred to as the Middlesex Water Company Component (the "MWC Component") and the MTMUA Component (the "MTMUA Component").

The MWC Component

The MWC Component shall consist of the following two (2) sub-components:

A. The rate charged by Middlesex Water Company ("MWC") for Service Under Contract - SC pursuant to Rate Schedule No. 5 ("**Service Rate**") of MWC's tariff; **PLUS**

B. The rate charged by MWC for Transmission Service South River Basin - TR - SRB pursuant to Rate Schedule No. 7 ("**Transmission Rate**") of MWC's tariff.

As of the Effective Date of this Agreement the aforesaid **Service Rate is \$1,622.82 per million gallons** and the **Transmission Rate is \$482.83 per million gallons**, which results in a **current MWC Component of \$2,105.65 per million gallons**. It is specifically and expressly understood and agreed that the MWC Component shall be increased each and every time the New Jersey Board of Public Utilities (the "BPU") approves an increase in either the Service Rate or Transmission Rate, or both, and the amount of the increase in the MWC Component shall be equal the amount of each BPU-approved increase. Further, any such increase in the MWC Component shall become effective at the same time as any such BPU-approved increase becomes effective for MWC. The parties hereto hereby specifically acknowledge that MWC presently has a petition for an increase in rates pending before BPU and that a rate increase of some magnitude will be approved within the near future. Any such rate increase (as well as all subsequent increases) will result in an increase in the MWC Component; same not having been factored into the initial MWC Component rate.

With respect to the MWC Component, the parties hereto hereby acknowledge and understand that the Authority intends to use and rely upon supplemental supplies of water to be purchased from MWC, at a cost equal to the Service Rate and Transmission Rate (effectively, the MWC Component rate), in order to provide water service to the Company. It is specifically agreed that the Authority shall provide the Company with written notification of all rate increase petitions or other proceedings, which may affect the Service Rate or the Transmission Rate, that are filed by MWC with BPU; which said written notification shall be effected within thirty (30) days of the Authority's receipt of written notice of any such petitions or proceedings from MWC.

It is expressly understood and agreed that the MWC Component shall **NOT** be subject to increase, except as, if and when the BPU approves increases in the Service Rate and/or Transmission Rate, as hereinabove set forth.

The MTMUA Component

The MTMUA Component is intended to cover and defray various costs and expenses that will be incurred by the Authority and/or that are associated with the use of the Authority's Water System in providing water service to the Company, including power, chemical, labor, overhead and other administrative expenses, as well as costs related to the MTMUA's utility plant in service.

As of the Water Service Effective Date of this Agreement the MTMUA Component shall be **\$1,161.51 per million gallons**. On each annual anniversary of the Water Service Effective Date during the initial ten-year term of this Agreement, the MTMUA Component shall be increased by two (2%) percent. In the event that the term of this Agreement is renewed or extended beyond the initial ten-year term (either by the Company affirmatively exercising its option to renew, or by an automatic year-to-year extension), then on each annual anniversary of the Water Service Effective Date from the tenth (10th) through the fourteenth (14th) annual anniversary of the Water Service Effective Date, the MTMUA Component shall be increased by three (3%) percent; and from the fifteenth (15th) through the nineteenth (19th) annual anniversary of the Water Service Effective Date, the MTMUA Component shall be increased by four (4%) percent. Attached hereto and made a part hereof, as Exhibit A, is a Schedule of the prospective increases in and to the MTMUA Component and the effective date of each such increase. Except as stated above and set forth in Exhibit A, the MTMUA Component shall **NOT** be subject to any other increase.

The Company shall pay the Authority at the aforementioned Rates (MWC Component plus the MTMUA Component) for the greater of: (A) the Contract Daily Minimum Quantity of Water (as defined below in Paragraph 7 of this Agreement); or (B) for all water delivered to the Meter Stations (as defined below in Paragraphs 5 and 6 of this Agreement).

4. Delivery Systems.

It is hereby understood and agreed that there are two (2) existing interconnections between the respective water systems of the Authority and the Company, which said points of connection are located at Lloyd Road (at or near the municipal boundary line between Marlboro Township and Aberdeen Township) and Schanck Road (at or near the municipal boundary line between Marlboro Township and Holmdel Township). The Authority and the Company further understand and agree that the water service contemplated by this Agreement shall **NOT** be delivered through the existing interconnections, but, rather, new interconnections shall be constructed and installed at or near or in place of the existing interconnections through which the Authority shall supply water to the Company. The Company, at its sole cost and expense, shall be responsible for the construction and installation of all aspects of the new interconnections, including the acquisition of all necessary easements for the location of meter pits, base equipment and all other required appurtenances, as well as for the procurement and installation of all water meters and metering equipment (herein referred to, collectively, as the "Interconnection Upgrades"). The Company shall be the sole and exclusive owner of the Interconnection Upgrades and shall be solely responsible for the repair, maintenance and replacement thereof. Except as specifically and expressly set forth herein, the Authority shall not be vested with an ownership interest in, or right or title to, any part of the Interconnection Upgrades. The foregoing notwithstanding, the design and construction of the Interconnection Upgrades, with respect to the physical connection with the Authority's Water System, shall be subject to the reasonable consent and approval of the Authority. Further, the Authority shall be entitled, at its own cost and expense, to construct and install its own control panel, pressure recorder and flow recorder within, at or near the meter pit at each point of connection and the Company shall use its commercially reasonable efforts to have the Authority's control panel and recorders receive the same signals from the metering equipment and interconnection as are received by the Company. All facilities and/or appurtenances that are constructed and installed by the Authority, i.e., the aforementioned control panel, pressure recorder and flow recorder, shall constitute the sole property of the Authority and the Authority shall be solely responsible for the operation, repair, maintenance and replacement thereof. Both parties shall fully cooperate with each other and, to the extent practicable, assist each other relative to the procurement, construction and

installation of the Interconnection Upgrades, including the procurement of all necessary or desirable governmental approvals, permits and/or authorizations.

Aside from the Interconnection Upgrades, the respective parties shall be solely responsible for constructing or installing such systemic improvements, if any, as may be necessary or desirable for, in the case of the Authority, to deliver the requisite supplies of water and, in the case of the Company, to receive such supplies of water. The foregoing is intended to include, without limitation, piping, fittings, valves, and other improvements or appurtenances, such as pressure reducing valves and pump stations.

The parties hereby acknowledge and affirm that the Company is desirous of receiving water service at the new Lloyd Road interconnection at a Hydraulic Gradeline ("HGL") of approximately three hundred (300') feet and at a HGL of approximately three hundred ten (310') feet at the new Schanck Road interconnection. The parties further acknowledge that the aforesaid circumstances will allow the Company to receive and utilize water service from the Authority without the need to install pumping facilities. The Authority does not envision or contemplate an inability to achieve the aforementioned HGLs, but said operational characteristics cannot be unconditionally guaranteed under all circumstances. However, in the event the aforesaid HGLs cannot be achieved and/or maintained, then, as hereinafter set forth in Paragraph 7 of this Agreement, the Company shall only be obligated to pay for the amount of water that can be supplied and conveyed via gravity from the Authority's Water System, regardless of Minimum Payment Obligations. It is specifically and expressly understood and agreed that the aforementioned possible deviation from or avoidance of any Minimum Payment Obligation shall only apply if the respective HGLs cannot be achieved or maintained at a daily rate of two hundred fifty thousand gallons per day (0.25 mgd), and not at any higher flows.

5. **Meter Stations/Points of Delivery.**

The parties understand and agree that delivery of all water supplies shall be made and metered through meter stations forming part of the Interconnection Upgrades, as well as through any

other points of delivery as may be reasonably agreed upon, from time to time, between the parties (hereinafter referred to as the "Meter Stations"). All water so supplied shall be metered at the Meter Stations.

6. **Meters, Services and other Appurtenances.**

As hereinabove set forth in Paragraph 4, the Company shall furnish, install and maintain, at its own cost, the Interconnection Upgrades, which shall include such service connections and meters as are deemed necessary for connection to the Meter Stations in order to receive water service from the Authority. The meters and service pipes, as well as all other components of the Interconnection Upgrades, shall remain the sole property of the Company. However, as set forth in paragraph 4 of this Agreement, the Authority shall be entitled, at its own cost and expense, to construct and install its own control panel, pressure recorder and flow recorder within, at or near the meter pit at each point of connection, which said improvements shall constitute and remain the sole property of the Authority.

The Company shall maintain and verify the accuracy of all meters on an annual basis, including the recalibration thereof. In that regard, the accuracy of such meters shall comply with all standards, rules and regulations of the BPU, the New Jersey Department of Weights and Measures and all applicable water industry protocols. The Authority shall receive reasonable advance written notice of all scheduled meter tests to be performed by the Company and the Authority shall be entitled to witness all such meter tests. Moreover, the Company shall provide all meter test reports, including the initial calibration report, to the Authority on a timely basis. The Authority shall have the right of access to the Meter Stations to test the meters by a certified meter technician at any reasonable time upon advance written notice.

7. **Minimum Payment Obligation; Allowable Excess Purchases and Maximum Limitations.**

The Company and the Authority hereby specifically understand and agree that, subject to the provisions of Paragraph 4 of this Agreement pertaining to the delivery of water

supplies at certain minimum HGLs (three hundred feet and three hundred ten feet, respectively), the Company shall be obligated to pay for a daily minimum quantity of water (herein referred to as the "Contract Daily Minimum"), regardless of whether the Company actually takes such quantities of water on a daily basis. The initial Contract Daily Minimum, as of the Water Service Effective Date, shall be a total of two hundred fifty thousand (250,000) gallons of water a day (hereinafter referred to as "0.25 mgd"). In the event the Authority is unable, on a given day, to deliver a minimum of 0.25 mgd at the aforesaid HGLs, then the Company shall not be obligated to pay the Contract Daily Minimum for any such day or days, but, rather, shall only be obligated to pay for the volume of water actually delivered.

The total daily quantity of water taken by the Company at the Meter Stations may exceed the Contract Daily Minimum by up to fifty (50%) percent on a 24-hour basis. This excess supply of water or increase in daily volume is guaranteed by the Authority, subject to the other provisions of this Agreement. That is to say, for so long as the Contract Daily Minimum is 0.25 mgd, the total daily quantity of water that may be taken by the Company shall be up to 0.375 mgd. The Company shall not be allowed to take daily supplies of water in excess of the Contract Daily Minimum plus fifty (50%) percent of the Contract Daily Minimum unless the Authority notifies the Company that such excess supplies of water are available. [With respect to the foregoing, the parties understand that any increase in the Contract Daily Minimum, during the term of this Agreement, will result in a proportionate increase to the maximum permitted daily volume.] In the event the Company is desirous of receiving or taking daily quantities of water that are in excess of the aforementioned limitation, a written request for such additional amounts shall be submitted only to the Authority's Director of Operations for consideration and either approval or denial by the Director of Operations, or, if deemed necessary, referred to the Commissioners of the Authority for a decision. In the absence of any such approval, the Company shall maintain the valves, settings and/or other appurtenances at the Meter Stations in such a manner so as to reasonably ensure that the limitations set forth herein are not exceeded. If, for any reason, the daily supplies of water delivered to and/or taken by the Company exceed the Contract Daily Minimum plus fifty (50%) percent thereof, the Company shall reduce the daily supplies of water being taken so that same do not exceed the Contract Daily Minimum plus fifty (50%) percent thereof immediately upon the receipt of written notification from the Authority to do so.

In addition to the foregoing, the quantity of water taken by the Company during the maximum peak hour multiplied by twenty four (24) shall not exceed the Contract Daily Minimum by more than one hundred (100%) percent unless the Company receives written notice from the Authority that such excess quantities, or rate of flow, are available. [With respect to the foregoing, the parties understand that any increase in the Contract Daily Minimum, during the term of this Agreement, will result in a proportionate increase to the maximum permitted peak hour flow/volume.] Even if prior approval is given by the Authority with respect to any excess quantities or rate of flow, same shall be subject to immediate cessation upon further written notification from the Authority to the Company relative thereto.

8. **Increase in Contract Daily Minimum.**

At any time during the original or any renewed or extended term of this Agreement, the Company may request an increase of the Contract Daily Minimum. All such requests shall be in writing and the Authority must respond to each such request in writing within sixty (60) days of the receipt thereof. The parties hereto hereby acknowledge that, in order to grant such a request the Authority may be obligated to increase its minimum purchase obligations from MWC and, further, the Authority may be unable to approve a requested increase if MWC is unable to increase its supply of water to the Authority.

The Company may also request a decrease of the Contract Daily Minimum, which such requests shall also be in writing. As with requests for increase, any request for a decrease must be responded to by the Authority, in writing, within sixty (60) days of the receipt thereof. The foregoing notwithstanding, it is expressly understood and agreed that, under no circumstances, shall the Company be permitted to decrease the Contract Daily Minimum below the initial amount of 0.25 mgd. Furthermore, any otherwise permitted requests for a decrease of the Contract Daily Minimum cannot and will not be approved unless the Authority is able to secure a corresponding decrease in its daily minimum purchase obligations from MWC.

The approval or denial of all requests for either an increase or decrease shall be subject to the reasonable discretion of the Authority and, in the event the Authority approves a requested increase or decrease of the Contract Daily Minimum, the resulting new Contract Daily Minimum shall remain in effect indefinitely until further increased or decreased.

9. **Payment.**

Water service charges shall be computed on a daily basis in conformity with the provisions of this Agreement. On a monthly basis, the Authority shall submit a billing statement to the Company, together with any supporting voucher that may be requested by the Company. Payment thereof shall be made by the Company within thirty (30) days.

10. **Combined Charge.**

Payments for water service (in excess of the Contract Daily Minimum) shall be determined on the basis of the **combined** total daily quantities of water supplied through all of the Meter Stations as determined by meter readings at said Meter Stations.

11. **Meter Readings.**

The Authority shall read the meters daily (on a regular hour/schedule to be agreed upon by the Authority and the Company) for all water supplied to the Company at each Meter Station then in operation. In order to effectuate the foregoing, it is hereby agreed as follows:

A. The Authority shall sign the Company's form of Access and Indemnification Agreement (a copy of which is appended hereto as Exhibit B) and abide by the terms thereof.

B. The Company, at the Company's sole cost and expense, shall provide the Authority with a hand-held meter reading device that can obtain the current totalized meter reads by touching the device to a surface-mounted touch pad at the situs of each Interconnection Upgrade and Meter Station.

C. The Company shall grant and permit Authority personnel to have daily access to the real property upon which the Interconnection Upgrades and Meter Stations are located for the

purpose of obtaining meter readings using the aforementioned hand-held meter reading device. The aforesaid access does not include access inside the meter vaults.

Upon the reasonable advance request of the Authority, the Company shall permit Authority personnel, accompanied by Company personnel, to have access to the water meters situated in any Meter Station in order to obtain periodic direct meter readings for purposes of validation and confirmation. The Company shall have the right of access to all meter readings taken by the Authority on a daily basis.

Furthermore, upon the Water Service Effective Date, the Company agrees to work with the Authority to validate the accuracy of the meter readings by implementing and adhering to the following protocols: (i) during the first six consecutive weeks, weekly readings at all Meter Stations shall be conducted jointly by the Authority and the Company for the purpose of comparing metering readings secured directly/ manually from the respective water meters situated inside the meter vaults with meter readings obtained by using the hand-held meter reading device and surface-mounted touch pads; (ii) during this six-week period, no daily manual meter readings will be taken unless same are warranted based upon unexpected operational circumstances [nonetheless, the Authority will be taking daily readings by using the hand-held meter reading device and surface-mounted touch pads]; (iii) assuming that the comparative meter readings obtained during the first six weeks are satisfactory (same reading value achieved), then the foresaid weekly comparative meter reading process shall abate; and (iv) if, at the end of the initial six-week period, the accuracy (same value) of the comparative meter reads cannot be achieved or maintained, then the Company and the Authority shall continue to conduct weekly comparative meter readings (remote and manual) during successive six-month validation periods, if necessary, until such accuracy is achieved/maintained.

12. Definitions.

Throughout this Agreement the following words, terms or phrases shall have the following meanings:

A. "Daily" or "24-hours" shall refer to the 24-hour period between the daily meter readings.

B. "Daily Minimum" shall have the same meaning as Contract Daily Minimum.

C. "Force Majeure" shall mean the inability of a party to perform due to: acts of God; orders of the government of the United States or the State of New Jersey, or any agency or instrumentality thereof; orders of any other governmental or quasi-governmental agency having jurisdiction over water supplies to be furnished hereunder; acts of terrorism; insurrections; riots; epidemics; landslides; lightening; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; explosions; breakage or accidents to machinery, pipelines, dams or canals, or partial or entire failure or contamination of a water supply, not resulting from the negligence of the party claiming such occurrence as the reason for the inability to perform; arrests; civil disturbances; acts of any public enemy; and any other causes not reasonably within the control of the party claiming such inability to perform.

13. **Water Quality.**

All water delivered by the Authority to the Company shall comply with all Federal and State requirements for safe drinking water and, to the extent applicable, both parties shall comply with all associated testing, notice and other requirements. Each party shall be entitled to perform water quality tests at all points of interconnection. All water quality tests shall be performed only by State of New Jersey certified laboratories. Subject to the foregoing, neither party shall be responsible for contamination or degradation in the quality of the water passing beyond the point of any interconnection between the water systems of the respective parties. Upon request therefor, either party shall be entitled to receive copies of water quality test reports associated with tests performed at or near the Meter Stations.

14. **Scheduling.**

The Authority shall have the right to modify its rate of delivery to manage its Water System requirements in accordance with accepted operating procedures. The Authority will use its reasonable best efforts to minimize such occurrences, as well as the duration thereof. Reasonable advance notification of any such modifications, specifically including, but not limited to, service interruptions, shall be provided to the Company by the Authority. In addition, the Company shall

provide the Authority with reasonable advance notification of any anticipated departures from its then normal water usage.

15. **Excused Performance.**

The Authority agrees to provide a continuous, regular and uninterrupted supply of water at the Meter Stations, subject to interruptions in service resulting from events of Force Majeure. The Authority shall not be liable for damages to the Company by reason of inadequate pressure or volume or quality or failure to provide water for any cause, whatsoever, provided that the same does not arise out of the negligent acts or omissions of the Authority. In the event of an interruption in service, the Authority agrees to act diligently, within the bounds of normal operating procedures, to return service to normal.

16. **Indemnification.**

The Company shall completely indemnify, protect and save the Authority harmless from any and all costs, expenses, liability, losses, claims, suits and proceedings of any nature, whatsoever, arising out of the water service provided by the Company to the Company's customers. However, as to claims involving water quality, the foregoing provisions are not intended to apply to water delivered by the Authority that does not comply with all Federal and State laws, regulations or requirements for safe drinking water before it is delivered to the Company, provided that there is proximate causation between any such claims and the deficiencies in water quality attributable to the Authority.

The Authority shall completely indemnify, protect and save the Company harmless from any and all costs, expenses, liability, losses, claims, suits and proceedings of any nature, whatsoever, caused by any breach by the Authority of its obligations under this Agreement.

Notwithstanding anything contained herein to the contrary, each party's aggregate liability to the other party arising out of or in connection with this Agreement shall not exceed an

amount of money equal to one (1) year's gross revenues required to be paid by the Company to the Authority based upon the Contract Daily Minimum in effect at the time of the occurrence giving rise to the liability, and each party hereby releases the other party from any liability in excess thereof. The foregoing provisions are not intended to limit either party's liability to third parties.

17. **Regulatory Approvals.**

This Agreement shall be filed with and, if applicable, subject to approval by the New Jersey Department of Environmental Protection as may be required by law. The Authority shall expeditiously initiate the said filing for any such approval and both parties agree to cooperate and act in good faith in connection with obtaining such approval, as well as any other regulatory authorizations.

18. **Binding Effect.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by either party without the prior written approval of the other party, which said approval shall not be unreasonably withheld. This Agreement does not create, nor shall it be deemed to create, any rights to any other party as a third-party beneficiary.

19. **Notices.**

All notices and demands of any kind ("Notice") permitted or required to be given by either party to the other party shall be in writing. All such Notices may be given by: personal service; facsimile transmission; regular mail; certified mail, return receipt requested; or by nationally recognized overnight courier service (such as Federal Express or Express Mail) and must be properly addressed and directed to the party to receive the same as follows:

As to the Company:

NEW JERSEY - AMERICAN WATER COMPANY, INC.
131 Woodcrest Road
Cherry Hill, New Jersey 08003

Att: Corporate Secretary

With a copy to:

NEW JERSEY - AMERICAN WATER COMPANY, INC.
131 Woodcrest Road
Cherry Hill, New Jersey 08003

Att: Vice President - Service Delivery

As to the Authority:

THE MARLBORO TOWNSHIP MUNICIPAL UTILITIES AUTHORITY
Post Office Box 280
Wickatunk, New Jersey 07765
[If by mail]

OR

THE MARLBORO TOWNSHIP MUNICIPAL UTILITIES AUTHORITY
14 Harbor Road
Morganville, New Jersey 07751
[If by personal service or overnight courier]

In the case of overnight courier service or certified mail, service of the Notice shall be deemed completed upon the placement of the Notice in the mail or with the overnight courier

service. Service by any other means shall be deemed completed upon receipt by the Company or the Authority, as the case may be, which shall include the receipt of the Notice by any of the respective agents, servants or employees of either the Company or the Authority at the respective addresses specified herein. Either party may change the address for the receipt of Notices upon written Notice to the other party as provided for herein.

20. **Validity; Severability; Enforcement.**

In the event that one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid by a court of competent jurisdiction, it is the intent of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein, unless a court of competent jurisdiction holds that such provision(s) are not severable from all other provisions of the Agreement or that the deletion materially alters the substance of this Agreement.

21. **Law Governing.**

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

22. **Miscellaneous.**

To the extent not inconsistent with the provisions and intent of this Agreement, all of the provisions of the Authority's duly adopted Rules and Regulations, as well as the provisions of N.J.S.A. 40:14B-1, *et seq.*, shall be deemed to govern water service hereunder.

23. **Entire Agreement.**

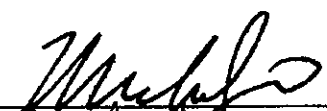
This Agreement, including all schedules and exhibits hereto, if any, constitutes the entire understanding between the parties respecting the subject matter hereof, and the parties shall not be bound by any other prior agreements, understandings or conditions, whether written or oral, respecting the subject matter hereof, other than those expressly set forth and stipulated herein. This Agreement may only be amended by a writing executed by both parties.

[END OF AGREEMENT PROVISIONS]

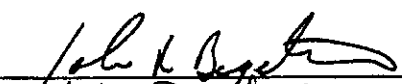
IN WITNESS WHEREOF, the parties have caused the foregoing Agreement, consisting of sixteen (16) pages, including this page, to be signed by their proper corporate officers and their proper corporate seals to be affixed the day and year first above written.

ATTEST:

NEW JERSEY - AMERICAN WATER
COMPANY, INC.



Michael J. Gro, Secretary

BY: 

John Bigelow, President

ATTEST:

THE MARLBORO TOWNSHIP
MUNICIPAL UTILITIES AUTHORITY



JO ANN DENTON, Secretary

BY: 

MICHAEL MESSINGER Chairman

EXHIBIT A

MTMUA (Rate) Component Schedule of Annual Rate Increases

[Page 1 of 2]

<u>Effective Date</u>	<u>Rate</u>
Water Service Effective Date [Anticipated to be June 1, 2006]	\$ 1,161.51
<i>First Annual Anniversary</i> of the Water Service Effective Date	\$ 1,184.74
<i>Second Annual Anniversary</i> of the Water Service Effective Date	\$ 1,208.43
<i>Third Annual Anniversary</i> of the Water Service Effective Date	\$ 1,232.60
<i>Fourth Annual Anniversary</i> of the Water Service Effective Date	\$ 1,257.25
<i>Fifth Annual Anniversary</i> of the Water Service Effective Date	\$ 1,282.40
<i>Sixth Annual Anniversary</i> of the Water Service Effective Date	\$ 1,308.05
<i>Seventh Annual Anniversary</i> of the Water Service Effective Date	\$ 1,334.21
<i>Eighth Annual Anniversary</i> of the Water Service Effective Date	\$ 1,360.89
<i>Ninth Annual Anniversary</i> of the Water Service Effective Date	\$ 1,388.11
<i>Tenth Annual Anniversary</i> of the Water Service Effective Date	\$ 1,429.75
<i>Eleventh Annual Anniversary</i> of the Water Service Effective Date	\$ 1,472.64

EXHIBIT A

**MTMUA (Rate) Component
Schedule of Annual Rate Increases**

[Page 2 of 2]

<u>Effective Date</u>	<u>Rate</u>
<i>Twelfth Annual Anniversary of the Water Service Effective Date</i>	\$ 1,516.82
<i>Thirteenth Annual Anniversary of the Water Service Effective Date</i>	\$ 1,562.32
<i>Fourteenth Annual Anniversary of the Water Service Effective Date</i>	\$ 1,609.19
<i>Fifteenth Annual Anniversary of the Water Service Effective Date</i>	\$ 1,673.56
<i>Sixteenth Annual Anniversary of the Water Service Effective Date</i>	\$ 1,740.50
<i>Seventeenth Annual Anniversary of the Water Service Effective Date</i>	\$ 1,810.12
<i>Eighteenth Annual Anniversary of the Water Service Effective Date</i>	\$ 1,882.52
<i>Nineteenth Annual Anniversary of the Water Service Effective Date</i>	\$ 1,957.82

EXHIBIT B
Page / of 4

ACCESS AGREEMENT

This ACCESS AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2008, by and between New Jersey-American Water Company, Inc., a New Jersey Public Utility Corporation having its corporate office at 131 Woodcrest Road, Cherry Hill, NJ 08003 ("NJAW"), and Marlboro Township Municipal Utilities Authority, having its principal offices at PO Box 280, Wickatunk, NJ 07765 (the "MUA").

RECITALS:

WHEREAS, NJAW is the owner of title in fee simple to certain improved real property located in Marlboro Township, Monmouth County, New Jersey, otherwise known as Lot _____ in Block _____ (the "Property"); and

WHEREAS, MUA desires to have access to and across the Property for the purpose of reading the meter in connection with the water purchase by NJAW under the Water Purchase Agreement dated _____ by and between NJAW and MUA (the "Water Purchase Agreement"); and

NOW, THEREFORE, in consideration of the promises and the mutual agreements hereinafter set forth, NJAW and MUA agree as follows:

1. MUA, its successors and assigns, and their duly authorized agents, employees and contractors shall have the right to enter in and upon the Property during normal business hours for the purposes stated herein.

2. ~~Prior to entry onto the Property, MUA shall give NJAW at least three business days advance notice of such entry.~~ *MUA shall be permitted to enter in and upon the Property on a daily basis and without notice to NJAW for the sole purpose of obtaining water meter readings by using*

3. Prior to any entry onto the Property by MUA, its agents, employees or representatives, MUA shall furnish NJAW with a certificate of insurance evidencing MUA's policy or policies of comprehensive general liability insurance, automobile liability insurance, worker's compensation and employers' liability insurance in full force and effect with limits of coverage not less than the amounts shown on Schedule A attached hereto and made a part hereof. Such certificate shall name NJAW as an additional insured. Such insurance shall be kept in full force and effect until termination of this Agreement. The insurance set forth herein may be carried in any combination of primary and excess liability policies so long as the total insurance coverage meets the requirements of this Section 3.

4. This Agreement contains the entire agreement between the parties hereto and no addition to or modification or cancellation of any term or provision of this Agreement shall be effective unless set forth in writing and signed by the parties hereto.

a hand-held meter reading device and surface-mounted touch pad.

EXHIBIT B
Page 2 of 4

5. Any party hereto may specifically waive any breach of this Agreement by any other party, but no such waiver shall constitute a continuing waiver of similar or other breaches.

6. If any provisions of this Agreement as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity or enforceability of the Agreement as a whole.

7. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to principles of conflicts of law.

9. This Agreement shall remain in effect from the date of execution until the termination of Water Purchase Agreement at which time MUA shall no longer have any right to enter upon or have access across the Property, provided that such termination does not affect MUA's obligation to NJAW under this agreement, specifically including, but not limited to the obligations under Sections 3, 10, 11 and 12 which shall survive any termination of this Agreement.

10. Prior to the expiration date of this Agreement, MUA shall repair and restore any damage or disturbance to the Property resulting from the activities of MUA or its agents or contractors.

11. MUA shall and does hereby (and shall cause its contractors and agents to) indemnify, defend, save and hold NJAW, its parent and affiliates and their respective officers, directors and employees harmless from and against any and all claims, costs, losses, expenses, liabilities, and damages to property or injuries or death to persons by reason of its entry onto the Property and its activities thereon, which indemnity shall include all costs of litigation and reasonable attorneys' fees incurred by NJAW, its parent or affiliates and their respective officers, directors and employees. The foregoing indemnification shall survive the expiration or termination of MUA's activities at the Property. MUA shall make no improvements, alterations, changes, or additions to the Property. Without in any way limiting the indemnity set forth in this Agreement, should MUA's entry onto the Property disturb, cause damage to, or aggravate the environmental or other general condition of the Property, then MUA shall unconditionally pay for the expenses related to returning the Property to substantially the same condition that it was in prior to the performance of MUA's investigations.

12. This Agreement shall constitute a license for MUA to utilize the Property only for access, and shall not be deemed to constitute an easement or other interest in the Property.

EXHIBIT B
Page 3 of 4

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

New Jersey-American Water Company, Inc.

MARLBORO TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT B
Page 4 of 4

SCHEDULE A

Comprehensive General
Liability

Combined Single Limit
General Aggregate
\$2,000,000
Each Occurrence \$1,000,000
Personal Injury
Property Damage

Automobile Liability

Combined Single Limit \$1,000,000
Bodily Injury (per occurrence)
Bodily Injury (per accident)
Property Damage

Worker's Compensation and
Statutory Employer Liability

Policy Limit ~~\$1,000,000~~ : *As required
by Statute*

~~Professional Liability~~

~~\$100,000.00-~~

First Amendment to the Agreement dated February 5, 2008 for the supply of water between the Township of Marlboro, the successor in interest to the Marlboro Township Municipal Utilities Authority ("MTMUA") a municipal corporation of the State of New Jersey maintaining its administrative offices at 1979 Township Drive, in the Township of Marlboro, County of Monmouth and State of New Jersey, and having a mailing address of 1979 Township Drive, Marlboro, NJ 07746 (the "Township") and New Jersey American Water Company, Inc., a public utility corporation of the State of New Jersey with its principal office at 1025 Laurel Oak Road, Voorhees, NJ 08043 (the "Company"),

WHEREAS, the Company and the Township entered into an agreement for the supply of water on February 5, 2008 ("the Agreement"); and

WHEREAS, on or about July 22, 2011 the Company requested to purchase water in excess of the allowable peak quantity of 0.375 million gallons per day ("mgd") or 375,000 gallons (in excess of 50% of the contractual daily minimum of 0.250 mgd, or 250,000 gallons); and

WHEREAS, the Township advised the Company via email communication (EXHIBIT A) that "peaking charges" will apply to water quantities purchased in excess of the allowable peak of 375,000 gallons; and

WHEREAS, the Township also advised the Company that peaking charges and rates shall be calculated in the manner similar to the formula used by Middlesex Water Company ("MWC") under the water supply agreement between MWC and the Township; and

WHEREAS, the Company has indicated its agreement via email communication (EXHIBIT A) to the said methodology of calculating peaking charges for water quantities purchased in excess of the allowable peak of 375,000 gallons.

NOW, THEREFORE, BE IT RESOLVED by the parties that the rate charged for water quantities purchased in excess of the allowable peak of 375,000 gallons shall be calculated in the manner similar to the formula used by MWC under the water supply agreement between MWC and the Township, as follows:

Peaking Charges

- A. The total daily quantity of water taken by the Company at the Meter Stations may exceed the Contract Daily Minimum by up to 50% on a 24-hour basis without affecting the Contract Rate. The quantity of water taken in the peak hour multiplied by 24 may exceed the Contract Daily Minimum by up to 100% without affecting the Contract Rate. Such excess quantities of water are known as the "Allowable Excess". The current Allowable Excess quantities are 375,000 gallons or 0.375 mgd

(0.250 mgd x 1.5) for 24-hour flow and 0.500 mgd (0.250 mgd x 2.0) for one (1) hour.

B. If the quantity of water taken in a 24-hour period shall exceed the Contract Daily Minimum by more than 50%, ("Daily Peaking Excess"), the Company shall pay for such Daily Peaking Excess at a rate (the "Daily Peaking Rate") determined by the following formula:

- (i) A fraction shall be determined (the numerator of which is the actual daily usage and the denominator of which is the applicable Contract Daily Minimum then in effect multiplied by 1.5).
- (ii) This fraction shall then be multiplied by the then applicable rate outlined in Section 3 of the Agreement.

The effect on billing is demonstrated in the following example:

Contract daily minimum	0.250 mgd or 250,000 gallons
Allowable excess quantity	0.375 mgd or 375,000 gallons
Water service rate	\$4,160.41 per mg
Actual daily usage	0.379 mgd or 379,000 gallons

The Daily Peaking Rate shall be determined as follows:

$$\frac{(0.379 \text{ mgd})}{(0.250 \text{ mgd} \times 1.5)} \times \$4,160.41 = 1.011$$

$$1.011 \times \$4,160.41 = \$4,204.79$$

An actual daily usage of 0.379 mgd represents 4,000 gallons more than the allowable excess (0.379 - 0.375 = .004 mgd, or 4,000 gallons).

In this example, the water service rate of \$4,160.41 shall be applied to 375,000 gallons and the Daily Peaking Rate of \$4,204.79 shall be applied to the additional flow of 4,000 gallons.

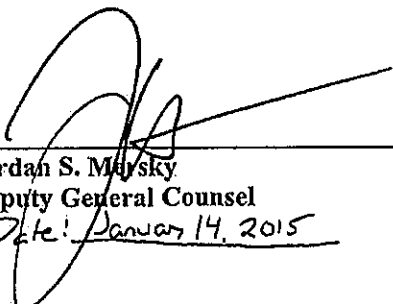
The "surcharge" amount for the additional flow is calculated as follows:
\$4,204.79 per mg ("Daily Peaking Rate") x 0.004 mgd = \$16.82

C. All other provisions of the existing agreement dated February 5, 2008 not amended by this document remain unchanged.

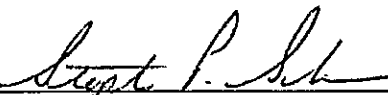
IN WITNESS WHEREOF, the parties have caused the foregoing Agreement to be signed by their proper corporate officers and their proper corporate seals to be affixed the day and year first above written.

ATTEST:

NEW JERSEY – AMERICAN WATER
COMPANY, INC.



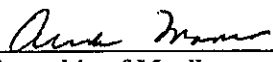
Jordan S. Maysky
Deputy General Counsel
Date: January 14, 2015

BY: 

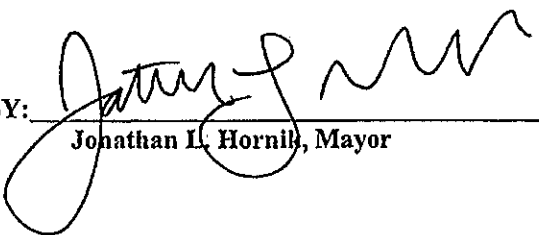
Stephen P. Schmitt
Vice President - Operations
Date: January 14, 2015

ATTEST:

TOWNSHIP OF MARLBORO



Township of Marlboro

BY: 

Jonathan L. Hornik, Mayor



Rajani Bhatia
<rajanibha@gmail.com>

07/22/2011 08:58 AM

To patricia.ramsden@amwater.com,
kevin.kirwan@amwater.com

cc Rajani Bhatia <rajanibha@gmail.com>, RBhatia
<rbhatia@marlboro-nj.gov>, BDImarco
<BDImarco@marlboro-nj.gov>, jcapp@marlboro-nj.gov,

bcc

Subject Re: preparation/logistics for Additional bulk water sale to
NJAWC

Hi Patty/Kevin:

1. This is to confirm that NJAWC is in agreement with surcharges for Excess
Flows Above Allowable Peak (EFAAP) of 375,000 gpd (total from both meters)

2 The surcharge formula and calculations will mirror MWC's contract with
Marlboro Township for such surcharges.

3. For 500,000 gpd flow, the rate for EFAAP will be $500,000/375,000 = 1.333 \times$
base rate of \$3654.96 = \$4872.06 The first 375,000 gpd will be billed at the
base rate of \$3654.96 and the remaining 125,000 gpd (EFAAP) will be billed
at the rate of \$4872.06.

3. Please print this e-mail , sign at the bottom to confirm your agreement ,
scan same and e-mail to all above with pdf attachment.

4. I understand that you may want more than 500,000 gpd. We will coordinate
with MWC and will advise you as to MWC's and our ability to supply the
additional quantity.

Thank you.

Ray Bhatia , P.E.
Marlboro Township
Water Utility Operations
732-536-0200 ext 1212
732-740-1732 (call)

Patricia Ramsden
PRODUCED NUMBER 7/22/11

MARLBORO TOWNSHIP

Water Utility Division

1979 TOWNSHIP DRIVE
MARLBORO, NEW JERSEY 07746
Telephone No. (732) 536-0200
Fax No. (732) 972-5301

August 2, 2011

New Jersey-American Water Company
P. O. Box 5602
Cherry Hill, New Jersey 08034-0502

ATTENTION: CATHY MATHIS, Billing Coordinator

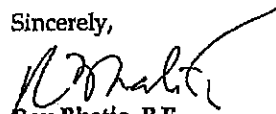
BILLING FOR THE MONTH OF JULY, 2011

	<u>Schank Road Meter</u>	<u>Lloyd Road Meter</u>
August 1, 2011 Readings:	129,130,000	93,767,500
July 1, 2011 Readings:	<u>122,490,000</u>	<u>90,701,000</u>
Monthly Usage:	6,640,000 gallons	3,066,500 gallons
Total Gallons Used:		9,706,500 gallons
Minimum Daily Obligation		250,000 gallons
Minimum Contract Obligation for July, 2011		7,750,000 gallons

SUBTOTAL BILLABLE USAGE AT BASE RATE:	9,706,500 gallons
Billing Calculation: 9.7065 MG X \$3,654.96 per MG	\$35,476.87
Surcharge for Excess Flows Above Allowable Peak (EFAAP) of 375,000 Gallons Per Day (GPD) - See attached spreadsheet for calculation of surcharge.	\$ 984.84
TOTAL AMOUNT DUE:	<u>\$36,461.71</u>

Please see attached document signed by Patricia Ramsden, Production Manager for New Jersey American Water Company authorizing the surcharge formula used in the calculation of this bill. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Ray Bhatia, P.E.

Water Utility Operations
and Regulatory Compliance
(732) 536-0200 Ext. 1212
(908) 907-8380 Cell
Email: rbhatia@marlboro-nj.gov

cc: Jonathan A. Capp, Marlboro Township Business Administrator (via e-mail only)
Robert W. DiMarco, Director, Marlboro Township Department of Public Works (via e-mail only)
Patricia Ramsden, Production Manager, NJAWC (via e-mail only)
Kevin Kirwan, NJAWC (via e-mail only)

CALCULATIONS FOR NJAWC WATER SALES - JULY, 2011

Date	Schank Road Meter x 1,000 gallons			Lloyd Road Meter x 100 gallons			Surcharge for Excess Flow Above Allowable Peak ("EFAAP") of 375,000 gallons during 24 hour period						
	Initial	Final	Consump.	Initial	Final	Consump.	Total Consumption for Both Meters	"EFAAP"	Multiplier	Rate for EFAAP per MG	Charges for EFAAP at Surcharge Rate	Charges at Base Rate	Surcharge Amount
7/1/2011	122490	122647	157,000	907010	908028	101,800	258,800	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/2/2011	122647	122805	158,000	908028	909045	101,700	259,700	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/3/2011	122805	122950	145,000	909045	909982	93,700	238,700	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/4/2011	122950	123095	145,000	909982	910920	93,800	238,800	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/5/2011	123095	123247	152,000	910920	911912	99,200	251,200	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/6/2011	123247	123400	153,000	911912	912905	99,300	252,300	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/7/2011	123400	123560	160,000	912905	913905	100,000	260,000	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/8/2011	123560	123710	150,000	913905	914910	100,500	250,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/9/2011	123710	123865	155,000	914910	915915	100,500	255,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/10/2011	123865	124010	145,000	915915	916855	94,000	239,000	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/11/2011	124010	124160	150,000	916855	917850	99,500	249,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/12/2011	124160	124320	160,000	917850	918890	104,000	264,000	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/13/2011	124320	124470	150,000	918890	919870	98,000	248,000	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/14/2011	124470	124630	160,000	919870	920895	102,500	262,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/15/2011	124630	124780	150,000	920895	921890	99,500	249,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/16/2011	124780	124935	155,000	921890	922895	100,500	255,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/17/2011	124935	125075	140,000	922895	923780	88,500	228,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/18/2011	125075	125225	150,000	923780	924780	100,000	250,000	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/19/2011	125225	125380	155,000	924780	925785	100,500	255,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/20/2011	125380	125640	260,000	925785	926755	97,000	357,000	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/21/2011	125640	125790	150,000	926755	927780	102,500	252,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/22/2011	125790	126210	420,000	927780	928760	98,000	518,000	143,000	1.381	\$5,048.72	\$721.97	\$522.66	\$199.31
7/23/2011	126210	126615	405,000	928760	929765	100,500	505,500	130,500	1.348	\$4,926.89	\$642.96	\$476.97	\$165.99
7/24/2011	126615	126870	255,000	929765	930740	97,500	352,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/25/2011	126870	127010	140,000	930740	931730	99,000	239,000	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/26/2011	127010	127410	400,000	931730	932715	98,500	498,500	123,500	1.329	\$4,858.66	\$600.04	\$451.39	\$148.66
7/27/2011	127410	127840	430,000	932715	933800	108,500	538,500	163,500	1.436	\$5,248.52	\$858.13	\$597.59	\$260.55
7/28/2011	127840	128225	385,000	933800	934735	93,500	478,500	103,500	1.276	\$4,663.73	\$482.70	\$378.29	\$104.41
7/29/2011	128225	128590	365,000	934735	935860	112,500	477,500	102,500	1.273	\$4,653.98	\$477.03	\$374.63	\$102.40
7/30/2011	128590	128810	220,000	935860	936935	107,500	327,500	0	1.000	\$3,654.96	\$0.00	\$0.00	\$0.00
7/31/2011	128810	129130	320,000	936935	937675	74,000	394,000	19,000	1.051	\$3,840.14	\$72.96	\$69.44	\$3.52
TOTALS			6,640,000			3,066,500	9,706,500	785,500			\$3,855.80	\$2,870.97	\$984.84

Subtotals at Base Rate 9.7065 X \$3,654.96 \$35,476.87
 Surcharge for EFAAP \$984.84
 Total Amount Due for July, 2011 \$36,461.71

BEFORE THE
STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF
NEW JERSEY-AMERICAN WATER COMPANY, INC.
FOR APPROVAL OF INCREASED TARIFF RATES
AND CHARGES FOR WATER AND SEWER SERVICE,
CHANGE IN DEPRECIATION RATES AND
OTHER TARIFF MODIFICATIONS

BPU Docket No. WR1501_____

OAL Docket No. PUC _____

DIRECT TESTIMONY OF

FRANK X. SIMPSON

Exhibit PT-4

NEW JERSEY-AMERICAN WATER COMPANY, INC.

1 approximately \$19 million, reducing our revenue requirement by approximately
2 \$22.2 million. These efficiencies are being passed on to our customers in this
3 proceeding. For every dollar of O&M generated by operating efficiencies the
4 Company is able to invest approximately \$6.50 in capital without impacting rates.
5 For example, if the Company were to save \$1 million in O&M it could turn around
6 and invest \$6.5 million without impacting rates. The Company is utilizing O&M
7 efficiencies to rehabilitate or replace aging infrastructure, mitigating the impact to
8 its customers.

9 The Company has also maximized its use of the DSIC mechanism, created by rule
10 in 2012. Please see the testimony of Mr. Donald Shields (Exhibit PT-3) and Mr.
11 Dante DeStefano (Exhibit PT-5) for more information on the DSIC.

HISTORIC AND PROJECTED CAPITAL STRUCTURE AND COST DATA**11. Q. What is the structure of the rate making, financial exhibits?**

14 A. We are proposing a test year in this case of the twelve months ending July 31, 2015.
15 The test year has been developed utilizing the general books and records of the
16 Company and other supporting data, starting with the actual twelve months ended
17 June 30, 2014, the base year. We believe that this test year is appropriate and
18 consistent with Board policy. We have made certain post-test year adjustments that
19 will be in service by the end of the six-months ended January 31, 2016 that are
20 major in nature and consequence for NJAWC and can be substantiated with very
21 reliable data. We have not requested any capital additions beyond the test year that
22 are not major in nature and consequence, which differs significantly from prior



Via Facsimile and E-Mail
January 16, 2018

Honorable Tricia M. Caliguire, ALJ
New Jersey Office of Administrative Law
P.O. Box 49
Trenton, NJ 08625-0049

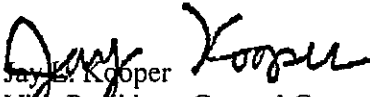
**RE: IN THE MATTER OF THE PETITION OF MIDDLESEX WATER
COMPANY, INC. FOR APPROVAL OF AN INCREASE IN ITS RATES FOR
WATER SERVICE AND OTHER TARIFF CHANGES AND FOR AN ORDER
AUTHORIZING SPECIAL ACCOUNTING TREATMENT OF INCOME TAX
REFUND PROCEEDS AND FUTURE INCOME TAX DEDUCTIONS**

**BPU Docket No.: WR17101049
OAL Docket No.: PUC 16144-2017S**

Dear Judge Caliguire:

Middlesex Water Company ("Middlesex Water") is in receipt of the Township of Marlboro's Motion For Intervention filed in the above-referenced matter on January 15, 2018. As Marlboro is both a statutory party and a customer of Middlesex Water with substantial, specific, and direct interests in the outcome of this matter, Middlesex Water does not object to Marlboro's Motion For Intervention.

Respectfully submitted,


Jay E. Kooper
Vice President, General Counsel & Secretary
Middlesex Water Company

cc: Service List (via e-mail)



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

PREHEARING ORDER

OAL DKT. NO. PUC 16144-17

AGENCY DKT. NO. WR17101049

**IN THE MATTER OF THE PETITION
FOR APPROVAL OF AN INCREASE
IN ITS RATES FOR WATER SERVICE
AND OTHER TARIFF CHANGES
FOR MIDDLESEX WATER COMPANY.**

BEFORE TRICIA M. CALIGUIRE, ALJ:

Pursuant to N.J.A.C. 1:1-13.1 et. seq., a telephone prehearing conference was held in the above-entitled matter on December 11, 2017, and the following procedures were settled.

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED

- A. Nature of Proceedings:** Petitioner requests approval of an increase in its rates for water service; in specific changes to its Tariff for Water Service, including the base consumption and base costs within the meaning of the applicable Purchased Water Adjustment Clause; and the recovery of the costs of improvements to petitioner's distribution system through reinstatement of a Distribution System Improvement Charge (DSIC). N.J.A.C. 48:2-21, N.J.A.C. 14:1-5.11, 14:1-5.12, 14:9-7.1 et seq., and 14:9-10.1 et seq.

- B. Issues to be resolved:** Whether petitioner can prove by a preponderance of credible evidence that the proposed increase in rates and other Tariff changes and the reinstatement of a DSIC at the level proposed by petitioner are necessary for petitioner to provide safe, adequate and proper service to its customers, preserve its financial integrity, and earn a reasonable return on the fair value of its property used and useful in the public service.
- C. Additional issue(s) for Rate Counsel:** TBD.

2. PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES

A. For Petitioner, Middlesex Water Company

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Jay L. Kooper
Vice President, General Counsel and Secretary
Pinelands Water Company
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Fax (732) 638-7515
Email: jkooper@middlesexwater.com

B. For Respondent, Board of Public Utilities (BPU)

Veronic Beke, DAG
Renee Greenberg, DAG
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C. For the Division of Rate Counsel

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cjuarez@rpa.state.nj.us

D. Intervenors:

For Township of East Brunswick:

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Gilmore & Monahan
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(732) 240-6000
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For New Jersey American Water Company, Inc.

Ira G. Megdal, Esq.
Cozen O'Connor
457 Haddonfield Rd., P.O. Box 5459
Cherry Hill, NJ 08002(856) 910-5007
Fax: (877) 259-7984
Email: imegdal@cozen.com

No change in designated trial counsel shall be permitted without leave of the Administrative Law Judge (ALJ) if such change will interfere with the scheduled hearing date or dates. If no special counsel is set forth in this Order, any partner or associate may be expected to proceed with trial on the agreed date.

3. SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING

The notice of hearing shall be served upon the parties by ordinary mail.

4. PUBLIC NOTICE

Petitioner shall comply with all statutory and regulatory requirements regarding public notice, including but not limited to N.J.S.A. 48:2-21. A public hearing will be held on January 17, 2018, starting at 5:30 p.m. at the Woodbridge High School, One Samuel Lupo Place, Woodbridge, NJ 07095, with the inclement weather date of January 23, 2018. The location and time for the public hearing shall be listed on the notice of hearing, which shall be published in a newspaper of general circulation, proof of which shall be provided to the undersigned and all parties by petitioner.

5. SCHEDULE OF HEARING DATES, TIME AND PLACE

Evidentiary hearings will take place on March 19, 21, and 22, 2018, at 9:00 a.m., at the Office of Administrative Law, 9 Quakerbridge Plaza, Mercerville, New Jersey 08619.

6. STIPULATIONS

Upon completion of discovery, the parties are to work on a joint stipulation of facts with joint exhibits such that only the disputed facts will be presented at the hearing. Counsel shall file a joint stipulation of facts, if any is agreed upon, with the undersigned no later than three business days prior to the evidentiary hearing. Pursuant to N.J.A.C. 1:1-15.11, the stipulation will contain a recitation of all facts that are not the subject of dispute. Counsel will attach to the stipulation any item of documentary evidence which would be admitted either by consent or without objection.

7. SETTLEMENT AGREEMENT

The parties are urged to confer and attempt to settle this matter. If a settlement is reached, the parties shall immediately notify the ALJ, and shall submit a stipulation of settlement. The ALJ is available for telephone settlement conference, if necessary.

8. AMENDMENTS TO PLEADING

None

9. DISCOVERY AND DATE FOR COMPLETION

- A. The parties shall exchange lists of the names and addresses of all person who may be called to testify as witnesses at the hearing. Except for good cause shown, the undersigned will not permit any witnesses to testify whose name does not appear on these lists. This restriction will not apply to rebuttal witnesses whose testimony cannot be reasonably anticipated.
- B. The parties shall exchange copies of all documents that may be relied upon at the hearing. Except as provided below the time limits for discovery will be strictly imposed in accordance with the OAL rules governing discovery, unless it is found to be impracticable.
- C. By agreement of the parties, specific discovery demands and responses shall be as follows:

December 18, 2017	Second Round Discovery to Petitioner
January 12, 2018	Responses to Second Round Discovery
January 19, 2018	12+0 Data from Petitioner
January 26, 2018	Discovery on 12+0 Data to Petitioner
February 6, 2018	Responses to Discovery on 12+0 Data
February 13, 2018	Testimony from Rate Counsel/Intervenors
Februray 20, 2018	Discovery on Rate Counsel Testimony
February 26, 2018	Rate Counsel Responses to Discovery

March 2, 2018	Petitioner Rebuttal Testimony
March 7, 2018	Discovery on Petitioner Rebuttal Testimony
March 14, 2018	Petitioner Discovery Responses

10. ORDER OF PROOFS

The burden of proof is on the petitioner and petitioner shall proceed first.

11. EXHIBITS MARKED FOR IDENTIFICATION

None at this time.

12. EXHIBITS MARKED IN EVIDENCE

None at this time. No exhibit will be marked for identification or introduced into evidence at the hearing unless an original is provided to the undersigned and a copy for each other party. This requirement will be strictly enforced unless impracticable.

Petitioner shall use the designation P-1, etc.; Staff shall use the designation S-1, etc.; and Rate Counsel shall use the designation RC-1, etc. Any party who is offering more than ten exhibits shall have them presented with an index in a three-ring binder.

13. ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES

No limitation. As to any expert witness, the offering party shall provide the other parties in the matter with a resume, a written summary of testimony, and reasonable access to all reports, data, investigations, studies, tests, and the like upon which the expert testimony will be based.

14. **MOTIONS**

Motions to Intervene have been received the Township of East Brunswick, New Jersey, and New Jersey American Water Company, Inc. To date, no opposition to these filings has been submitted.

Motion practice, if any, will be conducted pursuant to N.J.A.C. 1:1-16 et seq.

15. **SPECIAL MATTERS**

None at this time.

This order may be reviewed by the **BOARD OF PUBLIC UTILITIES**, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

December 26, 2017 _____

DATE

TMC/nd



TRICIA M. CALIGUIRE, ALJ